PHILIP A. AMICONE MAYOR



CITY HALL YONKERS, NEW YORK 10701

DAN SCHORR INSPECTOR GENERAL

Ph: 914-377-6107 Fax: 914-377-6990

DEPARTMENT OF INSPECTOR GENERAL CITY OF YONKERS

TO:

Hon. Joseph Nocca, Ethics Board Chair

CC:

Philip A. Amicone, Mayor

Chuck Lesnick, City Council President

FROM:

Dan Schorr, Inspector General 28

SUBJECT:

Ethics Allegations Involving Awarding of Impound Contracts

DATE:

May 9, 2011

This report is issued in response to a letter received from Mayor Philip A. Amicone directing that the Inspector General (IG) and the Ethics Board undertake a review of "Council President Chuck Lesnick's connection to Transit Auto Towing" and a letter from Council President Lesnick asking that the IG and Ethics Board also review "the connections between the Mayor and those in his administration to each of the companies that responded to the towing RFP" [Request for Proposals].

Summary

Mayor Amicone and Council President Lesnick each allege that the other inappropriately used his office to help a favored tow company earn a City impound contract. As discussed at the Ethics Board meeting of April 14, 2011, we have investigated the allegations and outlined the relevant facts and issues so that the Ethics Board can judge whether there are Ethics Code violations and/or appearances of impropriety. However, many of the charges involve questions of intent that can't be resolved with the available evidence. Future impound contracts should involve company bidding and publicly disseminated objective analysis of competing companies in order to reduce the potential for improper conduct, and/or its appearance.

At the request of the Ethics Board, this report will not be released publicly until May 20th so that the Ethics Board can first hold a meeting on May 19th and discuss the information outlined below.

Background

On March 15, 2011, the IG issued a report entitled "Yonkers Vehicle Tows and Impounds" (Attached Exhibit 1) that reviewed the City's administration of tow company services and related financial and contractual issues. The report concluded, in part, that the City "recently took positive steps towards improving its procedures for awarding tow and impound contracts." However, we recommended several improvements, such as "having City employees who interact with the companies provide written performance evaluations prior to the next contract" and "requiring tow companies to bid on the price of impounding vehicles" in order to provide additional important objective criteria and potentially bring increased funds to the City. One purpose of these recommendations was to provide more public clarity to the selection process in order to minimize allegations of favoritism, such as those that are the subject of this report.

In response to the report, Council President Lesnick issued a press statement later that day in which he criticized the process for awarding such contracts. He concluded by commenting, "While this IG report validates those concerns, it does not go far enough to examine possible conflicts between the administration and the winning vendors and the process by which the City circumvented state law with respect to appropriate licenses."

The following day, March 16th, Mayor Amicone sent a letter to the IG and the Ethics Board requesting a "review of Council President Chuck Lesnick's connection to Transit Auto Towing" (Attached Exhibit 2). Transit Auto Towing (Transit), which had previously held a contract with the City to impound vehicles, was not awarded a new contract in early 2010 when three companies were given two year contracts. Instead, A.P.O.W. Towing (A.P.O.W.) was awarded the contract previously held by Transit. Mayor Amicone's letter stated that "[a] number of disturbing occurrences involving Mr. Lesnick and Transit Auto Towing have come to light that, at a very minimum, when taken together, more than just suggest an appearance of impropriety. There are questions and concerns that need to be reviewed, answered, and accounted for." The letter then outlined specific allegations against Council President Lesnick, which will be discussed in this report.

On March 17th, Council President Lesnick responded by issuing a letter to the IG and the Ethics Board that requested a review of "the connections between the Mayor and those in his administration to each of the companies that responded to the towing RFP" (Attached Exhibit 3). He alleged in the letter that "these connections, along with the Mayor's intent to punish Transit Auto Towing for political reasons, resulted in the Administration's flagrant and willful disregard of state law regulating towing and a flawed process in awarding the towing contracts." Council President Lesnick was subsequently asked to provide specific concerns regarding these issues, which will also be addressed in this report.

The objectives of the review were to:

- 1. Investigate and evaluate allegations made by Mayor Amicone and Council President Lesnick regarding alleged improprieties in connection with the awarding of the impound contract and relationships with tow companies
- 2. Resolve outstanding questions of fact regarding these allegations

- 3. Provide the Ethics Board with relevant facts and issues so that it can determine whether there are any violations of the City Code of Ethics and/or appearance of impropriety
- 4. Make recommendations for the awarding of future impound contracts in order to minimize the potential for future ethical questions and disputes

In the course of our review, we took sworn statements from Mayor Amicone, Council President Lesnick, and all City Council members. In addition, we interviewed all impound contract selection committee members and spoke with others with knowledge of the selection process, such as Peter Kischak, President of Service Station Dealers of Greater New York, and the owners of A.P.O.W. and Transit. We also reviewed recordings of relevant meetings, such as those held by the Board of Contract and Supply, the City Council, and City Council committees.

Discussion

Allegations Involving Council President Lesnick

Mayor Amicone's March 16th letter to the IG and Ethics Board outlines several specific facts concerning Council President Lesnick and his relationship with Transit. Descriptions and evaluations of these issues follow. Although each incident in itself may not be an ethical violation, Mayor Amicone's letter states that together they "create an aura of concern and a patina that suggests both the appearance of impropriety and the potential for stepping over that not-so-blurred line."

Transit Auto Towing's Support of Council President Lesnick's 2009 Re-Election Campaign

The Mayor's letter asserts that Transit donated \$150 to Council President Lesnick's 2009 reelection campaign and provided "an in-kind contribution...by using one or more of their company trucks as a campaign vehicle by adorning it with Lesnick campaign signs and driving it throughout Yonkers," sometimes with Council President Lesnick standing with supporters on the truck. The letter further alleges that Council President Lesnick failed to report this "in-kind" donation on his campaign financial disclosure forms.

Council President Lesnick acknowledges this campaign support from Transit (total monetary donations of \$200) and points out that towing companies have supported various Yonkers political candidates, including a \$100 donation from A.P.O.W. to Mayor Amicone during his 2007 re-election campaign. Regarding the "in-kind" contribution, we requested an opinion from the Enforcement Council for the New York State Board of Elections, who ruled that Council President Lesnick should have reported this campaign support in his 2009 financial disclosure reports. Failure to report "in-kind" contributions is a violation of § 6200.6 of the Rules and Regulations of the State Board of Elections. We informed Council President Lesnick about the Board of Elections' position and his campaign treasurer subsequently amended his filings to include the "in-kind" support from Transit.

Council President Lesnick Publicly Acknowledging Transit's Assistance with Anti-Domestic Violence Causes

The letter notes that Council President Lesnick thanked individuals from Transit in his newsletter for donating a truck to help promote his annual candlelight vigil for Domestic Violence Awareness

Month. It also states that Council President Lesnick thanked Transit in a "News from City Council President Chuck Lesnick" e-mail message for its support of My Sister's Place, a domestic violence shelter and advocacy organization.

Council President Lesnick categorizes Transit as a "good corporate citizen" and states that its charitable support should be thanked and encouraged.

Votes by Council President Lesnick Regarding the Impound Contract

Mayor Amicone's letter cites two votes by Council President Lesnick that involved the awarding of the impound contract. First, on February 23, 2010, "an amendment to Chapter 111 of the City Code is submitted by council members Murtagh, Larkin, and Shepherd calling for the number of tow companies utilized to be increased from the present three to *up to six* (emphasis in original). The amendment is defeated on party lines, with Council President Lesnick and the three democratic council members voting against the change and the three republican council members voting yes." Next, at the February 25, 2010 Board of Contract and Supply (BOCS) meeting, "Council President Lesnick is the only vote against the contract award to County, A.P.O.W., and Don-Glo Towing. It passes 4-1. Lesnick does not disclose his relationship with Transit Auto Towing before the vote."

Mayor Amicone alleges that Council President Lesnick cast these votes in order to help Transit maintain its impound contract, voting against expanding the number of contracts when he believed Transit's contract would be renewed and voting against the awards at the BOCS meeting once Transit was not selected for a new contract. However, Council President Lesnick asserts that he voted against expanding the number of contracts because dividing the impound work among more companies would not be economically viable, according to at least two companies. Furthermore, he states that he voted against the awarding of the contracts at the BOCS meeting because he believed the City unlawfully allowed a company without a dismantler's license to receive a contract (see Allegations Involving Mayor Amicone).

Although possible motives for these and other votes are certainly fair game for political discourse and debate, we find that there is no available dispositive evidence that would resolve this dispute about Council President Lesnick's intent. Regarding Council President Lesnick not disclosing his relationship with Transit, it is true that neither he nor Mayor Amicone disclosed their relationships with Transit and A.P.O.W., respectively, prior to the vote. Whether such disclosure is required and whether there is an appearance of impropriety regarding these votes and the related facts are matters that the Ethics Board should address.

Transit Retaining Council President Lesnick's Former Law Firm

The letter's final allegation is that in March 2010, "Transit Auto Towing files suit against the City of Yonkers in regards to being denied the tow contract. They hired the firm of Smith Buss & Jacobs LLP, Lesnick's former law firm and current landlord, as their attorneys."

Council President Lesnick resigned from the firm after he requested and received an advisory ethics opinion from the Ethics Board in 2006 (Attached Exhibit 4), although he continues to rent office space from the firm and uses a firm e-mail address. Council President Lesnick denies steering Transit

towards Smith Buss & Jacobs. Nevertheless, the Ethics Board should review his current relationship with the firm and decide whether he is complying with its 2006 opinion.

Conclusion

Mayor Amicone's letter presents facts that demonstrate that Council President Lesnick and Transit Towing have had a continuing relationship. Transit has given Council President Lesnick campaign support, including "in-kind" assistance that he should have reported on his 2009 financial disclosure filings. In addition, Transit has assisted him with his charitable causes and is currently suing the City while represented by his former law firm. Furthermore, he has cast votes that possibly had the intended result of assisting Transit's business development, an intent which Council President Lesnick denies. Nevertheless, these facts alone are not enough for us to conclude that there is any violation of law or a *quid pro quo*. The Ethics Board retains jurisdiction to make a determination as to whether any sections of the Ethics Code have been violated and/or whether there is any appearance of impropriety.

Allegations Involving Mayor Amicone

Council President Lesnick's March 17th letter to the IG and Ethics Board does not make any specific allegations against Mayor Amicone but cites "connections between the Mayor and those in his administration to each of the companies that responded to the towing RFP," "the Mayor's intent to punish Transit Auto Towing for political reasons," and "the Administration's flagrant and willful disregard of state law regulating towing." We interviewed Council President Lesnick and asked him to specify these alleged ethical and legal violations. His accusations are discussed below.

Alleged Disregard of State Law

As we discussed in our March 15th report, prior impound contracts had required an eligible company to have a New York State dismantler license. However, the City determined that the dismantler license requirement was overly restrictive, limited competition, and was unnecessary to fulfill the obligations of the impound contract. The City thus opened up the contract to include companies that are designated by New York State as "itinerant vehicle collectors" to broaden the field of those who can apply for the contract and create greater competition. As a result of this change and an increase in the fees the companies could legally charge customers, three new tow companies sought the contract last year. One of the new companies, A.P.O.W., received a contract, while Transit did not.

Council President Lesnick maintains that the administration violated the law by expanding the field of eligible companies to include itinerant vehicle collectors. Transit unsuccessfully raised this argument in New York State Supreme Court and is now appealing the matter, which is pending before the Appellate Division. Whether Council President Lesnick is correct on the law will be resolved by courts.

Peter Kischak, President of Service Station Dealers of Greater New York, states that he had been lobbying the City for years to open up the contract to itinerant vehicle collectors and that member companies had complained to him about being unfairly shut out of the contract competition. We

believe that Mayor Amicone and his administration had ample justification to expand the impound contract pool to include itinerant vehicle collectors and we see no evidence of an Ethics Code violation, let alone a "flagrant and willful disregard of state law." However, the courts will ultimately determine whether the City's actions are contrary to New York law.

Mayor Amicone and A.P.O.W. Towing

Council President Lesnick cites "the relationship between the Wuestenhoefer family that owns A.P.O.W. Towing and whose relatives also catered personal events for the mayor (through Best in Gourmet), his own [2004] inaugural celebration, and despite the fact that the business is Connecticut-based and not in Yonkers, was contracted by the City to cater Yonkers Business Week."

Regarding the 2004 inauguration, there have also been allegations concerning the timing and method of payment by Mayor Amicone. However, our review of the billing and payments reveals that Best in Gourmet billed the "Amicone 2004 Inaugural Committee" approximately \$100,000 for 785 guests, and that \$95,000 was paid in the first quarter of that year from that committee, with the rest paid within the next few months. Thus, we find no problem with this arrangement. Best in Gourmet was also paid \$4,455 for a 2007 Amicone campaign event, and it received several Yonkers Business Week contracts, including one for approximately \$45,000 on April 28, 2011. Mayor Amicone states that assertions that Best in Gourmet catered personal events for him, such as his son's wedding, are not true.

Although A.P.O.W. donated \$100 to Mayor Amicone's re-election campaign in 2007, and his campaign committee, his inaugural committee, and the City have utilized the services of a caterer related to the A.P.O.W. owners, the available evidence does not demonstrate any improper favoritism or "intent to punish Transit." Furthermore, all members of the contract selection committee state that the Mayor and his staff did not attempt to steer one of the impound contracts away from Transit to A.P.O.W.

Conclusion

Mayor Amicone does have political and personal connections with a company that competed for and was awarded an impound contract. However, Yonkers City Code Section 111-15 empowers the Mayor to select three companies for the impound contract and, although there is no requirement for an evaluation committee to be assembled and make recommendations, the Mayor did take this step. All committee members judged A.P.O.W. to be a qualified company and there is no evidence of a violation of law or a *quid pro quo*. As stated previously, the Ethics Board retains jurisdiction over allegations of Ethics Code violations and will determine whether there is any appearance of impropriety.

Recommendations for Future Impound Contracts

As we stated in our earlier report, the City took positive steps with the awarding of the impound contracts by forming a selection committee and opening the contract to additional companies. Nevertheless, more can be done to provide clarity as to why companies are selected and minimize suspicion of misconduct on all sides. Much of the accusations and debate regarding the awarding of

the impound contracts can be avoided if clear, objective criteria that are utilized in the selection process are made publicly available. Furthermore, City employees who interact with the companies should provide written performance evaluations prior to the next contract and companies should bid on the price of impounding vehicles in order to provide an important objective criteria and potential additional funds to the City.

Conclusions and Recommendations

Thorough investigation of the allegations of impropriety made by Mayor Amicone and Council President Lesnick regarding the other's relationship with a tow company and actions involving the awarding of impound contracts has led to a detailed analysis of facts and issues to be considered by the Ethics Board. However, some of the charges involve accusations that, while possibly appropriate in the realm of political discourse, involve questions of intent that can not be resolved. In the future, company bidding and publicly available objective analysis of competing companies would clarify the justification for awarding impound contracts and minimize such allegations.

EXHIBIT 1

PHILIP A. AMICONE MAYOR



CITY HALL YONKERS, NEW YORK 10701

DAN SCHORR INSPECTOR GENERAL

Ph: 914-377-6107 Fax: 914-377-6990

DEPARTMENT OF INSPECTOR GENERAL CITY OF YONKERS

TO:

Philip A. Amicone, Mayor

CC:

Chuck Lesnick, City Council President

All City Council Members

Edmund Hartnett, Police Commissioner Carl Maniscalco, Finance Commissioner

FROM:

Dan Schorr, Inspector General

SUBJECT:

Yonkers Vehicle Tows and Impounds

DATE:

March 15, 2011

This report is issued in response to inquiries from various City officials and members of the public regarding the City's administration of tow company services and the related financial and contractual issues.

Summary of Findings and Recommendations

The City recently took positive steps towards improving its procedures for awarding tow and impound contracts. Nevertheless, additional transparency and objective criteria are needed, such as having City employees who interact with the companies provide written performance evaluations prior to the next contract. Requiring tow companies to bid on the price of impounding vehicles would provide an important objective criteria and could bring increased funds to the City. Additionally, City records for tow company activity are often hand-written and inconsistent, resulting in instances of under-billing the tow companies. Improved record-keeping and better communication are needed to increase the efficiency and accuracy of the billing process.

Background

When the Yonkers Police Department (YPD) or the Parking Violations Bureau (PVB) encounter vehicles that they believe should be towed and/or impounded, private tow companies are notified to

perform such functions. These companies must meet certain minimum qualifications and, in the case of impounding, compete with each other for the contractual right to work with the City.

Recently, several questions and concerns regarding the City's relationship with and selection of tow companies have been brought to our attention. The objectives of the review were to:

- 1. Evaluate procedures for vehicle tows initiated by the City
- 2. Review the process for selecting tow companies for City impound contracts
- 3. Analyze financial payments made by tow companies to the City
- 4. Assess and recommend possible improvements for City interaction with tow companies

In the course of our review, we looked at City tow logs for calendar year 2010 and corresponding billing records for 2002 thru 2010, preparing Excel schedules to analyze relevant data. We also reconciled impound and billing records for the period of October thru December 2010. Additionally, our office interviewed members of the YPD Communications Division, Hack Unit, Abandoned Auto Unit, and Fiscal Services Department. We also spoke with supervisors in PVB and the Finance Department, and offered representatives of the relevant tow companies the opportunity to talk with us before issuing this report.

Discussion

Tow Companies and the "Police List"

Yonkers City Code, Section 111, governs the "towing and storage of abandoned, damaged, disabled, and wrecked vehicles" in order to "establish an orderly system for the safe and expeditious removal and storage of these vehicles from the streets and highways of the City of Yonkers." Among other items, it sets forth requirements for situations in which vehicles encountered by the YPD are disabled and need to be towed.

The YPD maintains a "police list" of eligible tow companies that may be called when a disabled vehicle must be towed because of an accident or other malfunction. These companies on the police list, also known as the "emergency roster," must conform to various mandates outlined in Section 111. Currently, nine tow companies are on this roster, and they perform a total of approximately 600-700 tows per year.

In order to successfully apply to be on the police list, a tow company must own and operate a "New York State-registered body and fender shop" and "must have a place of business within the City of Yonkers." The Code also specifies other requirements, such as paying the requisite license fee, maintaining a specified amount of insurance coverage, being on twenty-four-hour call, and responding within twenty minutes to a YPD tow request.

Section 111 provides that the YPD rotate which licensed tow company on the police list is called for each emergency tow. Two pre-printed lists are utilized, one for the east side and one for the west side of the City, with each company having one listing for each medallion it possesses. The Code also mandates that "[a] heavy-duty police list shall be established in the same manner as the police list." However, in practice both are combined into one police list.

Impounded Vehicles Contract

The YPD and PVB order the impound of vehicles on certain occasions, such as when they are illegally parked in certain areas, suspected to be evidence in a pending criminal investigation, or excessively delinquent in parking violations summonses. The vehicles are then impounded and secured by one of the City tow companies. The impounding of such vehicles generates revenue for the tow companies involved.

Section 111-15 sets forth that the Mayor, after having received recommendations from the Police Commissioner, "shall designate three qualified licensees, each to maintain an impound area with the City of Yonkers and to remove an impounded vehicle thereto when and as directed by the Police Department." Thus, three tow companies are selected to impound vehicles for the City, with each being awarded a two-year contract. In order for a tow company to be designated as one of the three impounds, it must already be on the police list (emergency roster) discussed above. In addition, it must have the capacity within the City to store at least fifty vehicles in a fenced-in area with twenty-four-hour security.

When the current contract was awarded in early 2010, the YPD chose not to make specific recommendations regarding preferred vendors. Instead, the City created a working group with representatives from the YPD, PVB, Mayor's Office, Corporation Counsel, Purchasing Department, and Finance Department to evaluate the applicants. The committee primarily considered the applicants' responses to the Request for Proposals (RFP) and the results of YPD facility inspections.

Prior to that contract, the three tow companies designated for impounding were Don-Glo, County Auto & Commercial Towing, and Transit Auto Towing. All three companies had New York State dismantler licenses, which had been contractually required. However, the City determined that the dismantler license requirement was overly restrictive, limited competition, and was unnecessary to fulfill the obligations of the impound contract. The City thus opened up the contract to include companies that are designated by New York State as "itinerant vehicle collectors" to broaden the field of those who can apply for the contract and create greater competition. As a result of this change and an increase in the fees the companies could legally charge customers, three new tow companies sought the contract last year in addition to the three above-mentioned companies. One of the new companies, A.P.O.W. Towing, received a contract along with Don-Glo and County. The current contracts expire in the spring of 2012. The City Council did consider expanding the number of impound contracts from three to a maximum of six companies, but rejected the proposal with a 4-3 vote on February 23, 2010.

The City took positive steps by forming this selection committee and broadening the contract requirements to include other capable companies in the contract competition. However, there was a lack of documentation regarding objective criteria for selecting the three companies. Furthermore, City employees who had the greatest interaction with the impound process and relevant companies reported not being interviewed regarding their evaluation of company performance before the awarding of the latest contract. In the future, we recommend that written evaluations of all current impound companies be created by relevant City employees and forwarded to those assisting in the selection process for the next contract. This procedure will provide more transparency and documentation regarding contract selection. We suggest that documented criteria for selection include

timely payment of monthly City invoices, consumer complaints, compliance with local zoning and workers compensation requirements, and maintenance and security of facilities.

The awarding of this contract to a new tow company, A.P.O.W. Towing instead of Transit, resulted in litigation that is currently pending before the New York State Appellate Division. The issues involved in that litigation are beyond the scope of this report and will be resolved by the court system. Furthermore, several individuals brought to our attention accusations of alleged legal and/or financial impediments to the awarding of the contract. To the extent that such issues are not covered by the ongoing litigation, we reviewed each in detail and found them to be either satisfactorily resolved or lacking sufficient weight to prevent the awarding of the contract.

Section 111-26 sets forth the maximum permitted charges for each tow and impound, with the storage fee capped at \$300 if the City is paying, such as in the case of a vehicle that is evidence in a criminal matter. There is no storage fee cap for City residents. The contract states that companies then must pay the City a fixed amount for each impound. This fee was increased to \$100 per impound with the awarding of the new contract. We recommend that with the next impound contract, interested tow companies bid on the contract price. This could provide additional funds to the City, as well as create an additional objective criteria for deciding which companies are awarded the contract.

One option for bidding involves the companies competing for how much they would pay the City per impound with a starting bid of \$100. Thus, the City should be able to receive more than the \$100 fee for each impound that it currently charges. Another option that the City could explore is having the companies bid with a total monetary figure that they are willing to pay per year for the right to have an impound contract. In such an arrangement, the City would have stable, fixed revenue from the contract and would save manpower costs as it would no longer have to determine how much to bill each company in a given month and how much to subtract from bills because of waivers (discussed on page five). In order to make sure that the companies all receive a fair share of the impound work, the YPD and PVB should monitor the contract activity to ensure that it is fair and consistent and possibly divide the City into geographic areas that each company would cover.

Impound Records and Finances

Each month the City bills the three tow companies \$100 for each impound. The YPD Communications Division maintains a hand-written log for impounds and other activity, with several columns for different information. The YPD Fiscal Services Department then utilizes these logs in order to create a monthly bill for each company.

The RFP states that the companies "will be dispatched by the Police Department's Communications Division on a rotating basis." In fiscal year 2010, the YPD billed County for 971 impounds, Don-Glo for 995, Transit for 632, and A.P.O.W. for 188 (Transit's contract expired and A.P.O.W.'s contract commenced in the last quarter of the fiscal year). In fiscal year 2009, County was billed for 1,135 impounds, Don-Glo for 996, and Transit for 804. After reviewing the available documentation, it is unclear why these companies that are utilized on a "rotating basis" have different numbers of impounds each year. The different numbers may be the result of problems with record keeping, unavailability of companies when they are called, or some other reason. We recommend that the YPD and PVB review their procedures and remedy any inequity.

Our review revealed inaccuracies in record keeping and billings that on numerous occasions cost the City money. We reviewed YPD billings for the months of October-December 2010 and found that in each month all three tow companies were under-billed by hundreds of dollars as impounds were not correctly counted. These errors were attributable to such problems as tow company names placed in the wrong column of the log and difficult-to-read handwriting. We recommend that the YPD review 2010 and 2011 billings and send out revised invoices to correct prior under-billing. In addition, future records should be kept in a more organized and accessible format, such as in an Excel file, so that billings are more accurate and records are easier to review and analyze. We also discovered that in 2008 a \$1,225 credit to Don-Glo was mistakenly re-applied on a second bill. As a result of our review, Don-Glo's future bills will be adjusted to take back this erroneous extra credit.

In addition, we found in our review that Transit's last payment occurred in April 2009 and it failed to pay the City in the last year of its contract, leaving a balance due to the City of approximately \$16,000. Although Transit was repeatedly billed for these funds, the City has not initiated legal action for this money. As a result of our audit, the City reportedly will now pursue legal remedies to collect the past due amount.

Some impounded vehicles are held for lengthy periods of time because of their connection to criminal investigations and prosecutions. Tow companies have expressed frustration at times with the fact that their storage fee to the City is capped at \$300 while they may have to hold on to the vehicle for well over a year. Recently, a vehicle that was being held because of its suspected involvement in a serious criminal matter was stolen from one impound facility, raising important issues regarding impound security. We recommend that such failure to adequately secure important police evidence be considered when the impound contract is considered for renewal.

An additional financial issue involves credits given by the City to tow companies when a vehicle is towed through no fault of the owner, such as because of emergency construction or inaccurate vehicle records. In such a case, the vehicle owner is not charged and the City will grant a waiver to the company for the relevant costs, which can be subtracted from a future bill. However, analyzing the frequency and accuracy of waivers on tow company billings is very difficult because waiver amounts are never listed on the invoices. Rather, the bills instruct the tow companies to "please subtract the costs related to the towing services described in the attached waivers." The lack of proper documentation of waivers on the actual bills has resulted in mistakes by the companies in remitting the correct monthly amount to the City. We recommend that future billings itemize the amount the company owes for tows (\$100 each), the amount of reduction for each applicable waiver, and a final net amount that must be paid. More detailed and complete bills will result in fewer mistakes and better controls.

Conclusions and Recommendations

Our analysis of the City's dealings with tow and impound companies leads us to conclude that although the City recently took positive steps towards improving its procedures for awarding tow and impound contracts, additional transparency and objective criteria are needed. City employees who interact with the companies should provide written performance evaluations prior to the next contract. Also, companies should bid on the price of impounding vehicles in order to provide an important

objective criteria and additional funds to the City. Furthermore, City records for tow company activity are often hand-written and inconsistent, resulting in instances of under-billing. Improved record-keeping and better communication are needed in order to improve the efficiency and accuracy of the billing process.

We make the following specific recommendations:

- Written evaluations of all current impound companies should be created by relevant City
 employees and forwarded to those assisting in the selection process for the next contract.
- Documented criteria for company selection should include timely payment of monthly City invoices, consumer complaints, compliance with local zoning and workers compensation requirements, and maintenance and security of facilities.
- Interested tow and impound companies should bid on the contract price, resulting in potential
 increased funds to the City and an additional objective criteria for deciding which companies
 are awarded the contract.
- Tow and impound records should be kept in a more organized and accessible format, such as in an Excel file, so that billings are more accurate and records are more easily reviewed and analyzed.
- The YPD should review 2010 and 2011 billings to tow companies and send out revised invoices to correct prior under-billing.
- The City should pursue legal remedies to collect past due tow and impound fees.
- Tow and impound billings should itemize the amount the company owes, the amount of reduction for each applicable waiver, and a final net amount that must be paid.

EXHIBIT 2



OFFICE OF THE MAYOR PHILIP A. AMICONE

CORRECTED COPY

March 16, 2011

Daniel Schorr, Esq. Inspector General Yonkers City Hall 40 South Broadway 5th Fl. Yonkers, New York 10701

Yonkers Board of Ethics c/o Helen Henkel Yonkers City Hall 1st Fl. Yonkers, New York 10701

Dear Inspector General Schorr and Members of the Board of Ethics:

Pursuant to the authority granted to me under the Yonkers City Charter Section C-7.2.A and Section C-1A-26.C, respectively, I am requesting that a *separate*, complete and thorough review of Council President Chuck Lesnick's connection to Transit Auto Towing be undertaken by both the I.G. and the Board of Ethics.

A number of disturbing occurrences involving Mr. Lesnick and Transit Auto Towing have come to light that, at a very minimum, when taken together, more than just suggest an appearance of impropriety. There are questions and concerns that need to be reviewed, answered and accounted for.

In addition, there are others things involving Mr. Lesinck and Transit Auto Towing (such as his failure to list the Transit Auto Towing's September/October 2009 'in-kind' contribution to his political campaign on his official, State-mandated Campaign Financial Report) that may rise to a clear and undeniable violation of law.

Various fact patterns and incidents create an aura of concern and a patina that suggests both the appearance of impropriety and the potential for stepping over that not-so-blurred line. A full review of all facts and interconnections especially the Committee and City Council meeting tapes and/or DVDs where the Amendment to Chapter 111 of the Yonkers City Code was considered and discussed should be undertaken:

September 8, 1992

Transit Auto Towing is terminated as a motor vehicle impound provider for Yonkers because they failed to submit any records in response to an audit by the City. Transit Auto Towing appeals the decision to the Supreme Court of New York.

<u>September 12, 1994</u>

The Supreme Court of New York, Appellate Division, Second Department rules against Transit Auto Towing and for the City of Yonkers, rejecting Transit's arguments on the grounds that rejecting the petitioner's bid was not arbitrary or capricious.

October 9, 2008

In Council President Lesnick's "Yonkers City Council" newsletter, he thanks Mike [Rotanelli] and Lucia from Transit Auto Towing for donating the truck to help him promote his annual candlelight vigil for Domestic Violence Awareness Month.

The event is organized by Carol Bengis, Lesnick staff member and girlfriend of a Transit Auto Towing Employee.

November 25, 2008

In his "News from City Council President Chuck Lesnick" e-mail, Lesnick again thanks Transit Auto Towing of Yonkers for their generosity regarding their support of My Sister's Place in Westchester.

March 4, 2009

Transit Auto Towing donates \$150 to Lesnick's campaign.

September/October 2009

Transit Auto Towing provides an in-kind contribution to Chuck Lesnick's campaign for Yonkers City Council President by using one or more of their company trucks as a campaign vehicle by adorning it with Lesnick campaign signs and driving it throughout Yonkers.

Lesnick fails to disclose this obvious in-kind donation on his campaign disclosure form.

February 5, 2010

After due diligence, the bid review committee takes a <u>confidential vote</u> in favor of County Auto Towing, APOW Towing and Don-Glo Towing

regarding a two-year contract for towing, storage and disposition of impounded vehicles.

February 23, 2010

An amendment to Chapter 111 of the City Code is submitted by council members Murtagh, Larkin and Shepherd calling for the number of tow companies utilized to be increased from the present three to *up to six*.

The amendment is defeated on party lines, with Council President Lesnick and the three democratic council members voting against the change and the three republican council members voting yes.

February 25, 2010

At the monthly BOCS meeting, Council President Lesnick is the only vote against the contract award to County, APOW and Don-Glo Towing. It passes 4-1. Lesnick does not disclose his relationship with Transit Auto Towing before the vote.

March, 2010

Transit Auto Towing files suit against the City of Yonkers in regards to being denied the tow contract. They hired the firm Smith Buss & Jacobs LLP, Lesnick's former law firm and current landlord, as their attorneys.

Thank you for your attention to this matter.

Sincerely

Philip Al Amicone

Mavo

PAA: ajg

EXHIBIT 3



OFFICE OF THE CITY COUNCIL PRESIDENT

CHUCK LESNICK

CITY COUNCIL PRESIDENT

BY HAND

March 17, 2011

Daniel Schorr, Esq. Inspector General Yonkers City Hall 40 South Broadway, 5th Fl. Yonkers, NY 10701

Yonkers Board of Ethics c/o Helen Henkel Yonkers City Hall, 1st Floor Yonkers, NY 10701

Dear Inspector General Schorr and Members of the Board of Ethics:

I am in receipt of Mayor Amicone's letter dated March 16, 2011 requesting that you conduct separate reviews of my "connection to Transit Auto Towing". I welcome the inquiry and look forward to addressing all your questions as part of your inquiries.

I write today to request that you expand the scope of your inquiries to conduct a complete and thorough review of the connections between the Mayor and those in his administration to each of the companies that responded to the towing RFP. These connections, along with the Mayor's intent to punish Transit Auto Towing for political reasons, resulted in the Administration's flagrant and willful disregard of state law regulating towing and a flawed process in awarding the towing contracts.

Your service to the City on such matters is truly appreciated and I look forward to meeting with you to discuss this matter further.

Sincerely,

Chuck Lesnick

Yonkers City Council President

EXHIBIT 4

ETHICS BOARD OF THE CITY OF YONKERS ADVISORY OPINION NO. 2006-04

April 13, 2006

Issues: May the City Council President, who both: (1) is a practicing attorney and (2) runs a consulting business, continue to represent clients in matters pending before City of Yonkers agencies? If not, may either his law firm, which employs him in an "of counsel" capacity, or his consulting company, in which he is a partner, continue to represent clients in matters pending before City agencies?

Answer: It is clear that the Yonkers Ethics Code disallows the City Council President from continuing to represent any client with respect to matters pending before any City agency. Such practice would also likely violate State ethics and professional responsibility laws as well.

To the extent that the Council President can be regarded as an "employee" of the law firm or consulting company, the Yonkers Ethics Code also prohibits these entities from representing clients in matters pending before City agencies.

The power of the Ethics Board to issue waivers does not cover these circumstances.

Facts

The Council President's Letter

City Council President Charles S. Lesnick (hereinafter, "the Council President"), who was sworn into office on January 1, 2006, has written a letter (hereinafter, "Letter"), dated March 3, 2006, to the Honorable Joseph Nocca, Chair of the Yonkers Ethics Board to request an Opinion regarding his ongoing professional activities outside of City government. A copy of the Letter is attached hereto.

The Council President serves as counsel to a law firm that is headquartered in Yonkers, Smith, Buss & Jacobs (the "law firm"). The Council President is also a partner in a consulting business that provides advice on historic façade conservation (the "consulting business").

The Law Firm's practice includes the following areas: Bankruptcy & Creditor, Business Law, Commercial Real Estate, Cooperative and Condominium, Energy Law, Environmental Law, Land Use and Zoning, Litigation, Matrimonial and Family Law. The Firm has handled matters before the City's Zoning Board of Appeals and Planning Board.

The Council President's Letter requests that the Ethics Board issue an opinion under §C1A-29 of the City Charter's Code of Ethics advising him on the following issues, specifically whether he may:

- A. Represent clients before a City agency. The Letter acknowledges that doing so is prohibited by law. 1
- **B.** Permit the Law Firm to represent clients before a City agency. The Letter suggests this would be lawful so long as the Council President does not receive any of the compensation that the Law Firm derives from such work.
- C. Represent clients who have matters pending before a City agency, but only on non-City related matters. The Letter suggests this would be lawful.
- **D.** Vote, or take other official action, on his clients' City business, where he had served these clients only on unrelated, non-City matters. The letter suggests that disclosure of the relationship would be sufficient, and that recusal from voting would be unnecessary.

Legal Analysis

I. RELEVANT LAW

A. Relevant Provisions of the Yonkers Code of Ethics

The Yonkers Code of Ethics (hereinafter, "Ethics Code") prohibits officials from representing clients before City agencies:

- §C1A-8 Representation.
- (A) A City officer shall not represent any other person in any matter before the City, nor represent another person in any matter against the interests of the City.
- §C1A-9 Appearances before City Agencies.
- (A) A City officer or employee shall not appear before any agency of the City except on his or her own behalf or on behalf of the City. [Emphasis added.]

The Ethics Code also prohibits the "outside employer" of any City officer from appearing on behalf of a client before any City agency that either employs the officer, or over which the officer has authority, including budgetary power:

- §C1A-9 B. The <u>outside employer or business of a City officer</u> or employee may appear on its own behalf before the City, but shall not appear on behalf of any other person:
- 1. before the particular agency, board, commission, or other specific part of the City government at which the City officer or employee serves or is employed; or
- 2. before any agency, board, commission, or other specific part of the City government as to which the City officer or employee has:
 - a. the authority to appoint any officer, employee or member; or

¹ The Council President also asks whether he may represent clients before the Yonkers City Court. The City Court is a State, not City, entity, and the City Council has no authority over it. Any concerns he may have regarding this practice should be directed to the State Office of Court Administration, which oversees State Courts.

b. the <u>authority to review, approve, audit or authorize any budget</u>, bill, payment or claim. [Emphasis added.]

"Outside employer" is defined to include entities that pay the officer for services rendered:

§C1A-4(N) "outside employer or business" shall mean:

- 1. any person from whom or from which a City officer or employee receives a financial benefit for services rendered or goods sold or produced;
- 2. any business in which the City officer or employee has an ownership interest of five percent (5%) or more;
- 3. any business in which the City officer or employee has an ownership interest which has a value in excess of fifty thousand dollars (\$50,000.); or
- 4. any business corporation for which the City officer or employee is an uncompensated member of the board of directors or is an uncompensated corporate officer. [Emphasis added.]

The Ethics Code requires an officer to recuse himself from any matter that might financially benefit his outside employer. Recusal includes non-participation in all meetings, discussions, voting, etc. regarding the matter:

§C1A-18. Recusal and Transactional Disclosure.

- (A) A City officer or employee shall immediately recuse himself or herself from formally or informally acting on a matter before the City when acting on the matter, or failing to act on the matter, may financially benefit any of the persons listed in Section C1A-6A.
- (B) A City officer or employee that has recused himself or herself shall not participate in any aspect of the matter, including but not limited to discussions or debate, rendering advice, voting, deciding to take action or deciding not to act, and attempting to influence others to act or not to act. [Emphasis added.]

The provision referenced therein, §C1A-6(A), includes, as such "persons," "his or her outside employer or business, or any owner, director, or office thereof."

B. Applicable Common Law Ethics Rules

Whether a potential conflict violates State or local ethics codes is not the only relevant issue. Judicial precedents hold that public officials must avoid an appearance of impropriety to assure the public that such officials are making decisions based on their best judgment of what is in the public interest, without *any suggestion* of self-interest. See, e.g. Matter of Tuxedo Conservation and Taxpayers Assn. v. Town Bd. of Town of Tuxedo, 69 A.D.2d 320 (2d Dep't 1979).

However, legislators are subject to a slightly different standard than other officials on the issue of recusal. As a general rule, legislators need not recuse themselves from deliberating and voting on a matter before the legislative body unless there is an existing conflict of interest or the *clear appearance* of a conflict. The reasoning is that when legislators recuse themselves, their constituents are deprived of a voice and, in essence, are disenfranchised from those matters on which their legislators did not participate. See, Peterson v. Corbin, 275 A.D. 2d 35 (2d Dept. 2000); Dupras v. County of Clinton, 213 A.D.2d 952 (3rd Dept. 1995). Recusal is only required when a direct conflict is found. See e.g.1997 Op Atty Gen (Inf) 22 (County legislator who also serves on a town planning

board should recuse himself from voting on appointments to the regional planning board); 1986 Op Atty Gen (Inf) 101(legislator must recuse himself or herself from participating in matters affecting the compensation and terms and conditions of his or her spouse's employment).

C. Ethical Rules Governing Attorneys

The New York Lawyer's Code of Professional Responsibility governs the standards of conduct for New York attorneys. While the Ethics Board is not charged with opining on this Code, because this Opinion relates to the practice of law, the Lawyer's Code is relevant to the analysis.

The Lawyer's Code also follows the rule that attorneys must avoid any appearance of impropriety. While in general, the Lawyer's Code primarily seeks to protect lawyers' clients from conflicts, and to insure the public's confidence in the legal profession, it also contains specific provisions regarding lawyers who serve as public officers. These provisions focus on eliminating any potential "improper advantage" that a client could attempt to obtain by hiring an involved official as an attorney:

EC 8-8. A lawyer who is a public officer, whether full or part-time, should not engage in activities in which his personal or professional interests are or foreseeably may be in conflict with his professional duties.

DR 8-101 Action as a Public Official.

A. A lawyer who holds public office shall not:

- 1. Use the public position to obtain, or attempt to obtain, a special advantage in legislative matters for the lawyer or for a client under circumstances where the lawyer knows or it is obvious that such action is not in the public interest.
- 2. <u>Use the public position to influence, or attempt to influence, a tribunal to act in favor of the lawyer or of a client.</u>

 * * *

In the limited situation of an attorney's firm handling a matter that the attorney had worked on previously as a public official, the firm may handle the matter so long as the attorney is "screened" from any involvement in it.

<u>DR 9-101 Avoiding Even the Appearance of Impropriety</u>. ... B. Except as law may otherwise expressly permit:

- 1. A lawyer shall not represent a private client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, and <u>no lawyer in a firm</u> with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:
- a. The disqualified lawyer is effectively screened from any participation, direct or indirect, including discussion, in the matter and is apportioned no part of the fee therefrom; and

- b. There are no other circumstances in the particular representation that create an appearance of impropriety.
- 3. A lawyer serving as a public officer or employee shall not:
- a. Participate in a matter in which the lawyer participated personally and substantially while in private practice or non-governmental employment ...

See N.Y. Eth.Op. 603 (N.Y.S. Bar Assn. 1989) (use of screening under §DR9-101(B) is a "narrow, qualified" exception to the general rule that a firm is disqualified if one of its attorneys is barred from representation by virtue of his service as a part-time public official). The New York Bar Association explains the purpose of these rules as follows:

Primarily the disqualification rules serve to prevent private clients from retaining a part-time public official in the hope of gaining some improper advantage by reason of his lawyer's public office. In addition the rules are designed to prevent public suspicion that the client may be gaining some improper advantage by retaining the public official.

N.Y. Eth.Op. 431 (N.Y.S. Bar Assn.1976).

II. APPLICATION OF LAW TO THE ISSUES THAT THE LETTER RAISES

A. Representing Clients Before City Agencies

The Council President's Letter correctly acknowledges that he may not lawfully represent clients before City agencies, boards, commissions, etc. The Ethics Code explicitly prohibits it: "A City officer shall not represent any other person in any matter before the City ... [and] shall not appear before any agency of the City" §§C1A-8 and -9. Separate and apart from the prohibition in the Ethics Code, such practice would create an appearance of impropriety, by creating an inevitable appearance that the agency in question would feel beholden to the Council President, and therefore would violate the common law rule discussed above. In addition, it may also violate DR8-101 of the Lawyer's Code, which disallows a lawyer who holds public office from using the public position to influence a tribunal to act in favor of a client.

B. The Law Firm Representing Clients Before City Agencies

The Ethics Code also prohibits both the Law Firm and the Consulting Business from representing clients before the City or its agencies, boards, etc.

1. Ethics Code

First, it is clear that under the Ethics Code's definition of "outside employer," the Law Firm is an outside employer of the Council President. The nature of the relationship as "of counsel" indicates that he "receives a financial benefit for services rendered," within the definition set forth in §C1A-4(N) of the Ethics Code. Indeed, the Letter suggests that the Council President may presently "share in the profits of the firm" and/or "receive compensation from the firm," inasmuch as the Letter suggests that he would be willing to

forego such payments in individual cases. The same analysis applies to the Consulting Business: the Letter notes that the Council President is a "partner" in that entity.

Second, the Ethics Code prohibits an official's outside employer from appearing before any City agency that either: (a) employs the official or (b) whose actions are subject to the official's "authority to review, approve, audit or authorize any budget, bill, payment or claim" §C1A-9(B). Appearances before the City Council, which employs the Council President, are therefore prohibited. Appearances before boards on which the Council President serves ex officio, such as the Board of Contract and Supply, would also be disqualified. The Council's broad budgetary powers also would have the effect of eliminating appearances before all City agencies that are listed in the City budget.

An argument could be made that certain City boards are not subject to such Council authority, and therefore should not be viewed as coming within this prohibition. For example, the Zoning Board of Appeals ("ZBA"), before which the Law Firm has in the past represented numerous clients, is not listed in the City Budget. This is because the ZBA is a board of unpaid volunteers and receives a relatively small amount of City funds directly.

But this argument would ignore that:

The City Code states that "The City Council may provide for compensation to be paid to experts, clerks and a secretary and may provide for such other expenses as may be necessary for the Zoning Board of Appeals to carry out its duties, not exceeding the appropriation made for such purpose" City Code, §43-142(E);

The agencies that provide professional staff to the ZBA, primarily the Planning and Law Departments, are subject to Council budget review and approval;

The annual budgets for the Planning and Law Departments is approved by the City Council with the knowledge that those departments staff the ZBA; and

Selection of the members of the ZBA is subject to the "advice and consent of the City Council;" City Code, §43-142(A).

Some of these factors are, strictly speaking, outside the exact prohibition of §C1A-9(B), which appears intended to address only where the City Council has some financial and/or budgetary authority over an agency. But several factors do involve such authority by the City Council. Moreover, all these factors, considered together, could be seen to create an appearance of impropriety if the ZBA were to hear an application handled by the Law Firm.

Essentially the same analysis would apply as to other City boards, such as the Civil Service Commission, and the Planning Board.

2. Other Laws

The Lawyer's Code, quoted above in pt. I.C, provides that the firm of a lawyer who previously served as a public official may represent a client in a matter that the official had previously worked on, provided that the official is completely screened from participation in the matter at the firm, including receipt of firm revenues generated thereby. But if the service is current, both the attorney/official and the firm are disqualified. See N.Y. Eth.Op. 603 (N.Y.S. Bar Assn. 1989)(firm is disqualified if one of its attorneys is barred because he is a public official). Nor does it matter if the lawyer is a law firm partner, associate or of counsel: the Bar Association holds that "[t]he role the attorney plays within the law firm, and the use and benefits the law firm chooses to derive from the attorney's skills, are irrelevant." Id.

While the potential for the appearance of impropriety, and the appearance of "improper advantage" exists in cases where a government considers and acts on a matter that the firm of one of its officials brings before it, the New York City Conflicts of Interest Board ("COIB") has determined that sometimes the onerous restrictions of the rule should give way, and has issued opinions granting waivers that allow firms that employ a member of a city board to appear before those same boards. Again, this is permitted so long as there is both screening at the professional level and recusal in the official arena. See, e.g. NYC Adv. Opin. 98-9 (COIB, 1998)(allowing law and architectural firms to appear before Community Boards if waiver is obtained); NYC Adv. Opin. 96-4 (COIB, 1996)(stating general rule that neither community board members nor their partners or employees in private firms may represent private clients before those community boards; "the public servant's recusal from such matters was not sufficient to avoid the public perception" of possible improper influence).

But such more permissive application of law does not have the effect of superseding the relatively stringent provisions of the Yonkers Ethics Code. And, as discussed below at pt II.E, the Yonkers Ethics Code does not grant the Ethics Board such powers to waive the Code's provisions.

C. Representing Clients who have City Matters on non-City Related Matters.

It is difficult to address this issue in the abstract, and the conclusions may differ based on the facts of a given case.

However, in general, the Ethics Code does not prohibit the Council President from handling non-City matters for clients who have matters pending before the City.

Depending on circumstances, a given case could create an appearance of impropriety by, for example, creating the impression that the public position is being used "to attempt to influence a tribunal to act in favor of the lawyer or of a client." Lawyer's Code, DR 8-101(2).

The New York State Ethics Commission held that a Commissioner of the New York State Public Service Commission, a lawyer whose practice involved bringing legal challenges to determinations of State agencies, "may not represent private parties [in suits

brought against agencies] that are regulated by, or regularly appear before the [Commission]," N.Y.Adv.Opin. 00-1 (N.Y.S.Eth. Comm. 2000), on the grounds that doing so would create an appearance of impropriety.

The Ethics Board recommends, to avoid any such appearance, that if any of the client's City-related matters come before the City Council, or any other board, commission, etc. on which the Council President serves, the Council President should not only disclose his relationship with the client, but also fully recuse himself from any consideration or vote on the matter.

D. Taking Official Action on his Clients,' or his Firms' Clients,' City Business

§C1A-18 (A) of the Ethics Code, read together with definition set forth in §C1A-6A thereof, addresses this issue. A City officer:

"shall immediately recuse himself from formally or informally acting on a matter ...when acting on the matter, or failing to act on the matter" may financially benefit "a person from whom or from which [the] City officer receives a financial benefit for services rendered."

Clearly, the Ethics Code prohibits the Council President from deliberating or voting on his client's matters before that come before him, even if he did not work on that matter for the client. The Ethics Code does not distinguish between whether the client who has retained the official in his professional capacity did so for a different matter than the one that has come before him in his official capacity.

Once again, the Letter poses the issue in the abstract, and case-by-case consideration could lead to a different result. For example, if the Council President worked for the client many years ago, and not since, disclosure of the relationship might be sufficient. ²

Whether this provision of the Ethics Code extends to either of the Council President's firms is less clear. The Ethics Code indicates that if either firm "may financially benefit" from the Council President's involvement, then he must recuse. The use of the word "may" rather than "will" shows that it was intended that a broad view be taken of potential conflicts and the resulting prohibition.

If, however, clearly neither the firm nor the Council President "may financially benefit" from the result of a client's city application, on which neither the firm nor the Council President worked, then the Ethics Code's prohibition would not apply.

But the inquiry would not end there. Under the common law ethics principles set forth above in point I C., there would then be a two part test. First, whether an actual conflict

² The New York Advisory Committee on Judicial Ethics employs a two-year recusal rule for cases of former clients who come before the court as a party. N.Y.Jud. Adv. Op. 97-85 (1997)(Judge should recuse, where party had been client of judge's firm within last two years); N.Y. Jud. Adv. Op. 96-55 (1996)(recusal appropriate where parties had been customers of judge's insurance or real estate companies within prior two years); and N.Y. Jud. Adv. Op. 95-05 (1995).

exists; and if not, then second, whether such vote would create an appearance of impropriety. This would depend on the circumstances of the individual case.

Other authorities find an appearance of impropriety in analogous circumstances. As noted above, the COIB does not permit a firm to appear before a board on which one of the firm's partner's serves, unless a waiver is obtained. NYC Adv. Opin. 98-9 (COIB, 1998). And the State Bar Association holds that the Lawyer's Code bars the attorney/official's firm from representation if it bars the official individually. N.Y. Eth.Op. 603 (N.Y.S. Bar Assn. 1989).

E. The Letter's Request for a Waiver under the City Ethics Code

The Council President's Letter requests a multifaceted waiver that would grant him permission with regard to several of the potential conflicts that the Letter raises.

The Ethics Board's waiver powers are far more limited than those of, for example, the New York City COIB, and do not apply to any of the issues that the Council President's letter raises.

Ethics Code §C1A-26(5) lists among the Ethics Board's powers as "grant waivers of compliance with the Ethics Code to the extent authorized in Section C1A-36." § C1A-36, in turn, limits such waivers to prohibitions set forth in §C1A-10 of the Ethics Code, and requires a supermajority vote of five member of the Ethics Board in doing so. Said §C1A-10 deals solely with the subject of "Post Service or Employment Activities." This subject is not one of the issues raised in the Letter.

Moreover, even if the Ethics Board had the power to waive compliance with other applicable provisions of the Ethics Code, the Ethics Board could still not affect the extent to which State laws and the Lawyer's Code apply.

Findings and Advice

The Council President must be cautious to avoid any conflicts or the appearance of impropriety with regard to these relationships. This Opinion primarily deals with abstract questions, and should not be read so narrowly as to avoid its meaning. For example, in referring to "the client" the Ethics Board intends a common-sense meaning, which would include the client's business, subsidiaries, immediate family, etc.

It is the Council President's sole responsibility to investigate the facts sufficiently to determine whether any further conflict exists, or may develop in any specific case. The Council President should seek further Board opinion should any potential conflict develop in regard to his continuing legal and consulting practices.